



Third World Network



Our world is not for sale.
STOP corporate globalization.

Provisions likely to be proposed if SOEs (competition) are added to the WTO¹

Why is this relevant?

State owned enterprises (SOEs) can be used for a variety of public purposes, including economic development, industrialisation, economic management, support for local businesses, employment, regional development, social and cultural needs, and infrastructure.

If SOE negotiations are added to the World Trade Organization (WTO), this is likely to restrict these SOE roles.

The Trans-Pacific Partnership (TPP) involving 12 countries² was concluded in October 2015 and the text was released.³ It includes a chapter on SOEs with more extensive disciplines than in past US free trade agreements (FTAs).

This SOE text appears to be the new US template as can be seen by the US proposing it in the current Trade in Service Agreement (TISA) negotiations where its proposal was described as largely similar to the provisions included in the TPP, but with some changes to account for the fact that TISA only covers services. 'For instance, the U.S. proposal in TISA incorporates the SOE definition from the final TPP text'.⁴

Some countries may try to add similar rules on SOEs to the WTO, either as 'SOEs' or as part of 'competition' rules,⁵ for example as a 'new issue'. (SOEs were part of the competition chapter of the TPP as late as April 2015).⁶

Below is a brief summary of the TPP SOE rules to give an idea of the implications if they were added to the WTO and so imposed on an additional 150 countries, most of which are developing or least developed countries (LDCs).⁷ More information can be found by reading the full text of the TPP SOE chapter and its annexes.⁸

What does the TPP SOE text say?

Entities covered

The TPP SOE chapter disciplines state-owned enterprises, state enterprises, and designated monopolies.⁹ These are defined as:

- state enterprise (SEs): an enterprise that is owned, or controlled through ownership interests, by a Party¹⁰. ('Owned', 'controlled' and 'ownership interests' are not defined in the TPP text, so this is vague and potentially broad, eg even including non-profit SEs).
- Designated monopolies:

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² Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore, the United States and Vietnam

³ <http://dfat.gov.au/trade/agreements/tpp/official-documents/Pages/official-documents.aspx>

⁴ Inside US Trade, 'TISA Countries Discuss U.S. SOE Proposal That Mirrors TPP Language', 3 December 2015.

⁵ See http://www.twn.my/title2/briefing_papers/No16.pdf and <http://www.twn.my/title2/t&d/tnd33.pdf> for a summary of the implications of adding competition rules more broadly to the WTO. <http://icrier.org/pdf/wto7.pdf> explains the way Japan etc tailored its competition laws to help its industrial development.

⁶ <http://fta.miti.gov.my/miti-fta/resources/auto%20download%20images/555e5f73c7785.pdf>

⁷ https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm

⁸ <http://dfat.gov.au/trade/agreements/tpp/official-documents/Pages/official-documents.aspx>

⁹ See the text for the restrictions on designated monopolies and state enterprises

¹⁰ Article 1.3 of Chapter 1

- private monopolies which are established/designated/authorised or are expanded to cover an additional good/service after the TPP starts operating and
- government monopolies which are established/designated/authorised or are expanded to cover an additional good/service before or after the TPP starts operating
- SOEs: principally engaged in commercial activities¹¹ and the government owns more than 50% of shares or controls more than 50% of voting rights or has the ability to appoint a majority of the board of directors.

Main disciplines on SOEs

The main rules essentially are that:

- a) the SOEs must open their purchasing and sales of goods and services to products and services from other TPP countries (national treatment and most-favoured nation (MFN)). If they cannot specify they will only buy goods/services from domestic suppliers (set-asides), nor can they still choose to buy from domestic suppliers if they are more expensive (price preferences).
- b) there are restrictions on the assistance (eg grants or debt forgiveness at all and loans, loan guarantees, equity, goods/services (other than general infrastructure) on better than commercial terms) that a government can provide directly/indirectly or via an SE/another SOE to its SOEs if it has adverse effects/causes injury in a variety of situations.¹²

Exceptions in TPP SOE chapter

There are some limited exceptions and negotiated schedules of non-conforming activities to these rules including:

- SOEs with annual revenue less than 200million special drawing rights¹³ are exempt from the main disciplines including the two above.
- Negotiated country-specific exceptions:
 - Sub-central SOEs and designated monopolies can be excluded from the two rules above and transparency rules if all TPP countries agreed they could be excluded in annexes. (But there will be negotiations within 5 years to reduce these sub-central exceptions).
 - Whereas for national level SOEs and designated monopolies, only the listed activities (that all TPP countries agree to) can be excluded and only from the two rules above.
 - So SOEs created in the future (unless they are listed in these exceptions) will be covered by all the SOE rules.
- Some sovereign wealth funds are excluded but only from some rules and only some pension funds are excluded from the chapter.
- Exceptions to the two main rules above for measures needed to respond temporarily to a national/global economic emergency.
- For actions to resolve a failed/failing financial institution
- For the central bank's monetary and exchange rate policy and regulation of financial service suppliers.
- Non-commercial assistance can be provided in the initial capitalisation of an SOE/acquiring a controlling interest in it, but only if it is principally supplying services within that TPP country. (So this does not apply to: ongoing support for these SOEs, SOEs which provide a significant amount of services in other countries at all, or SOEs producing and selling goods at all).

¹¹ Further defined in Article 17.1. Even if the SOE is making a loss, if its principal activities look to make a profit, it can be caught. Even though there is an exception for activities on a 'cost recovery' basis, this may not cover activities which make enough money to cover future infrastructure/expansion or contingencies for future government funding/revenue shortfalls etc.

¹² The meaning of adverse effects and injury are spelt out in the TPP SOE chapter

¹³ Special drawing rights in US\$ can be found at http://www.imf.org/external/np/fin/data/rms_sdrv.aspx